



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document Reviewed (include title): **Excise Tax Advisory (ETA) 535.04.240 (Alternative Credit Computation Formula Seasonal Employment Manufacturers)**

Date last adopted/issued: **August 22, 1986**

Reviewer: **Cindy Evans**

Date review completed: **February 14, 2002**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). YES ☐ NO ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly explain the subject matter of the document(s):

Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy and by creating employment opportunities in specific distressed areas of this state. Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the 15% average increase employment threshold.

The purpose of this document is to explain the computation of average employment positions for those manufacturers who engage in regular and recurrent employment of persons on a seasonal basis only. The computation is needed for purposes of determining if the manufacturer has met the 15% increase in employment threshold.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the



		statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
X		Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain. **The Legislature has made several statutory changes to Title 82.62 RCW since this ETA was issued in 1986, including changes to the credit amounts for each new job position. The ETA does provide important information and should be updated to reflect the legislative changes made to the program.**

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
		Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
	X	Should this interpretive or policy statement be incorporated into a rule?
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affect the information now provided in this document?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the



		document?
--	--	-----------

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **While the ETA is written in a clear and concise manner and is providing the intended results, the information on the amount of B&O tax credit available for each position is out of date. To determine the correct amount of credit the taxpayer would need to refer to RCW 82.62.030 and WAC 458-20-240.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **RCW 82.32.300 authorizes the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?



Please explain. **No other governmental entities or state agencies have similar regulatory requirements.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive statement that imposes no new or additional administrative burdens on businesses that are not imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **RCW 82.62.010(7)**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **N/A**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs):

CPC Partnership and CPC Partnership II and CPC International Apple Co., Inc. v. State of Washington, Dept. of Rev., Dockets No. 00-005 to 007, 00-008 to 009 (2001)(holding that RCW 82.62.020 requires that the person seeking the B&O tax credit submit an application to the Department of Revenue before hiring employees).



Administrative Decisions (e.g., WTDs):

- **Determination No. 00-099, 20 WTD 53 (2000)**(noting that RCW 82.62.020 requires the person seeking the B&O tax credit to submit an application to the Department of Revenue before hiring employees).
- **Determination No. 00-033, 19 WTD 719 (2000)**(holding that to retain eligibility for the B&O tax credit for new hires at a facility in a distressed area, a manufacturer must keep the new positions filled for a period of twelve consecutive months and the new hires must cause its employment level for the tax year to exceed its employment level for the previous tax year by 15 percent).
- **Determination No. 99-351, 19 WTD 670 (1999)**(noting that RCW 82.62.020 requires the person seeking the B&O tax credit to submit an application to the Department of Revenue before hiring employees).
- **Determination No. 87-104, 2 WTD 453 (1987)**(holding that a business meeting the requirements of Chapter 82.62 must apply for the tax credits prior to hiring the new employees).

Attorney General's Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **None**

10. Review Recommendation:

<u> X </u>	Amend
<u> </u>	Repeal/Cancel (Appropriate when repeal is not conditioned upon another rule-making action.)
<u> </u>	Leave as is (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
<u> </u>	Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).



In the ancillary review of ETA 535.08.16, completed along with the review of Rule 240 in September 1997, it was recommended that the ETA be incorporated into Rule 240 when it was revised. When subsequently revising Rule 240, it was determined that the detailed information provided in this ETA should be retained in such a document as opposed to being incorporated into the rule. The information on how to compute the 15% threshold requirements for seasonal manufacturers might cause confusion so it is recommended that the ETA be updated to reflect current credit amounts.

11. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4